



COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL

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August 22, 2002

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Syn. No. 10-B  
6/26/02

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman  
SUPERVISOR GLORIA MOLINA  
SUPERVISOR YVONNE BRATHWAITE BURKE  
SUPERVISOR DON KNABE  
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN   
County Counsel

RE: **Monitoring and Tracking of Litigation and Lawsuit Costs  
Item No. S-3, Agenda of August 27, 2002**

This is to provide a report, as requested by your Board at its budget meeting on June 26, 2002, more specifically describing procedures which will be implemented in connection with our ongoing efforts to improve the assessment, monitoring and review of lawsuits and to more effectively control the costs of County litigation. The report supplements our previous memorandum of June 25, 2002, a copy of which is enclosed for reference.

In addition, in the course of implementing these procedures we intend to consolidate and improve the collection and updating of our litigation databases to facilitate the ongoing monitoring and review processes and to enable us to more efficiently and effectively keep your Board and the affected County departments informed of the status of County litigation. This will be coordinated with the implementation of the new Risk Management Information System (RMIS) approved by your Board on March 6, 2001.

Enclosed are modified protocols and procedures which will be implemented with regard to County liability litigation, including Sheriff's liability, children's foster care, general liability and construction liability for the assessment and ongoing monitoring and review of claims and lawsuits from initial receipt of claim or lawsuit through ultimate disposition of each matter.

These modified protocols and procedures have been adapted from those utilized successfully in monitoring the medical malpractice/hospital liability program over the past several years. They will be applied to existing cases outside the medical malpractice/hospital liability program in accordance with the benchmarks and thresholds which trigger peer review, round table meetings and other requirements. As they are implemented with regard to these other areas of liability litigation, we will look to further expand them to litigation matters which do not directly seek damages, such as personnel, labor and policy-related lawsuits.

While we intend to develop and implement these procedures and actions immediately, they will be reviewed and refined on an ongoing basis and will be coordinated with and subject to improvements which may be identified through consultations with the various affected County departments and the County Risk Manager to be appointed by your Board pursuant to the Consolidated Risk Management Program approved by the Board on April 30, 2002.

LWP:DMM:mr

Enclosures

c: David E. Janssen  
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer  
Board of Supervisors

# **COUNTY COUNSEL PROTOCOLS AND PROCEDURES FOR ASSESSMENT, MONITORING AND REVIEW OF COUNTY LIABILITY LITIGATION**

## **CLAIMS MANAGEMENT**

- A. General Litigation Division staff will pick up all newly filed liability claims from the Executive Office, Board of Supervisors on a daily basis.
- B. Each claim will be immediately reviewed by a Deputy County Counsel to determine the involved County department and request a report by the department within 30 days on all facts and circumstances relating to the claim.
- C. The appropriate data, including claimant, department, nature of claim and amount of claim, if specified, will be entered into the appropriate litigation tracking databases, including the Risk Management Information System (RMIS) when it is operational.
- D. Upon receipt of departmental report, the claim and report will be referred to a Deputy County Counsel for review, assessment and determination of 1) potential County liability, 2) potential exposure, 3) whether immediate settlement efforts should be pursued, and 4) whether the claim should be denied.
- E. If a claim is identified for possible pursuit of immediate settlement efforts, the Deputy County Counsel and Division Chief will immediately meet with designated representatives of the involved department(s) to assess the claim and thereafter, if determined to be appropriate, initiate settlement discussions with the claimant or claimant's representative.

## **LAWSUIT MANAGEMENT**

- A. Receipt of Summons and Complaint
  - 1. General Litigation Division will on a daily basis pick up from the Executive Office, Board of Supervisors all lawsuits served on the County, its officers and/or employees.
  - 2. Each lawsuit will be immediately reviewed by the Chief of the General Litigation Division, together with the claims file, if any, and any other relevant documents to assess a) the nature of the case; b) the department(s) involved; c) potential County liability; d) potential exposure; and e) the appropriate County Counsel Division to handle and/or monitor the case.

**B. Assignment of Cases**

1. The appropriate Division Chief will immediately determine whether to assign the case to an in-house attorney or to outside contract counsel, considering criteria such as case sensitivity, potential exposure, level and availability of expertise required and in-house attorney workload.
2. Case data will be entered into the appropriate County Counsel and RMIS databases.
3. The lawsuit and all pertinent documents, including the claims file, if any, will be provided to the assigned in-house attorney or outside contract law firm.

**C. Responsibility of Assigned In-House or Outside Law Firm Attorney**

1. The assigned attorney will immediately review the lawsuit and relevant documents to assess the matter and develop a proposed defense strategy.
2. A Case Evaluation Plan (CEP) will be prepared, which shall include:
  - a. recommended defense strategy, including potential settlement strategy;
  - b. anticipated pleadings;
  - c. recommended discovery to be pursued;
  - d. anticipated expert analysis and/or testimony which may be required;
  - e. projected attorney fees and defense costs, including expert fees;
  - f. a projected time line for pertinent events, including pleadings, discovery, motions and trial; and
  - g. evaluation of prior estimates of potential liability and exposure.
3. The CEP will be submitted to the County Counsel Division Chief for review and approval.

4. Periodic written reports will be provided to the County Counsel Division Chief on at least a quarterly basis or upon any significant change in status or pertinent development in the case.
5. Upon any change in status or development in a lawsuit which results in a change in estimates of potential liability, exposure or other pertinent factor, the assigned attorney will notify the supervising attorney, Division Chief and senior managing attorney, and the appropriate litigation databases will be updated to reflect the revised information.

**D. Round Table Meetings**

1. Within six (6) months after assignment of a lawsuit to an in-house attorney or outside contract law firm, a Round Table Meeting will be held at the Office of the County Counsel to include the assigned attorney, County Counsel Division Chief, County Counsel supervising attorney, any third party administrator involved, County Centralized Risk Management representative and designated departmental representative(s). The purpose of the Round Table Meeting will be to assist in the development of an accurate evaluation of the facts, the legal theories, litigation strategy, potential risk management/loss prevention issues and possible corrective action measures. Round Table Meetings are only one of many tools to be utilized by the defense team to continually search for an accurate understanding of all the circumstances surrounding actions alleged in the litigation to enable the defense team to assess and communicate to the Department, Board of Supervisors and others the potential liability and level of exposure to the County.
2. Subsequent Round Table Meetings will be scheduled as needed, based upon potential probability of liability and/or significant exposure.
3. In all cases, a Round Table Meeting will be held at least 45 days prior to trial.

**E. Benchmarks for Monitoring Litigation Fees and Costs – Peer Review**

1. A Peer Review Meeting, to include the assigned attorney, supervising attorney and Division Chief, will be held for the purpose of reevaluation of the CEP and to review litigation strategy in each case where legal fees reach or exceed \$25,000.

2. A Peer Review Meeting, to include the assigned attorney, supervising attorney, Division Chief and appropriate senior managing attorney, will be held in the following circumstances:
  - a. In each case in which the total defense fees and costs reach or exceed \$50,000. Subsequent Peer Review Meeting will be held in each such case thereafter on at least a quarterly basis.
  - b. In each case in which costs for experts reach or exceed \$50,000. Subsequent Peer Review Meetings will be held in each such case thereafter on at least a quarterly basis.
  - c. In each case in which the estimated exposure, as set forth in the current CEP, is \$500,000 or more. Subsequent Peer Review Meetings will be held in each such case on at least a quarterly basis.

**F. Mediation of Selected Lawsuits**

1. In any case where as a result of information presented in periodic status reports, round table meetings, peer review meetings or other reviews it appears that significant changes in estimates of potential liability, potential exposure or defense costs indicate that the County's interests may be best served by a prompt settlement, the assigned attorney, supervising attorney, Division Chief and senior managing attorney will meet with the County Counsel to consider the feasibility of pursuing mediation to resolve the matter.
2. If it is determined that the case should be quickly resolved, and that mediation may assist in accomplishing a reasonable settlement, opposing counsel will be contacted to propose mediation in an effort to facilitate a reasonable and mutually agreeable settlement of the litigation.

**REPORTS TO THE BOARD OF SUPERVISORS AND INVOLVED DEPARTMENT(S)**

**A. Departmental Reports**

1. Reports to the Department Head(s) will be made at least quarterly on all open lawsuits involving the Department. Such reports will include the legal fees and costs incurred to date, estimated potential liability and exposure, and case status including trial date, if scheduled.

2. Special status reports shall be provided to the Department Head(s) when there is any significant or material change in status or significant development in any lawsuit involving an estimated exposure of \$500,000 or more, including such events as the calendaring of a settlement conference or trial.

**B. Board Reports**

1. Periodic Reports

- a. A monthly consolidated report will be provided which will continue to include information on new claims filed and lawsuits served upon the County, but will be expanded to include information on special interest cases (e.g., excessive force, sexual harassment, child injury or death), outside counsel assignments, cases of significance known to be set for trial, and cases and claims settled.
- b. Quarterly reports will continue to be submitted on medical malpractice/hospital liability program cases.
- c. Quarterly reports will be submitted on outside counsel fees and costs.

2. Special Reports

- a. Special reports will continue to be made upon service, change of status or the occurrence of pertinent events in any case involving high visibility, sensitivity or exposure.
- b. Written settlement offers in all cases involving potential exposure of \$100,000 or more will be reported within 15 days of receipt of the offer.
- c. A report will be provided on each case in which trial has commenced.
- d. A report on the result of a trial in a case will be reported within the next business day after announcement of the decision or verdict.
- e. Reports and recommendations, when appropriate, will continue to be made regarding significant post trial proceedings and the filing of appeals or writs in the appellate courts in those cases where adverse decisions or judgments have been made or entered by the court.

- f. Reports and recommendations, when appropriate, will continue to be made in all cases of high visibility, sensitivity or exposure whenever significant settlement proposals or opportunities are made or presented.
- g. A report will be provided on any case set for trial within the next 30 days in which the estimated exposure is \$500,000 or more. Such report will include information on the trial court, potential exposure, any last settlement demand and counter-offer, County legal defense fees and costs to date and the number of days estimated for trial.





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June 25, 2002

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TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman  
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FROM: LLOYD W. PELLMAN   
County Counsel

RE: **Monitoring Lawsuit Costs**

This is to provide a further report on our efforts to monitor and control lawsuit costs as recently requested by the Board during the discussion associated with the settlement of both a federal lawsuit and a state lawsuit brought by a County employee.

Enclosed is our detailed plan by which we expect to further reduce the litigation costs associated with these major areas of litigation: Sheriff's litigation; employment litigation; children's services litigation; and construction litigation.

We remain committed to the reduction of litigation expenses in all areas to free up funds for the main mission activities of the various County departments.

LWP:lwp

Enclosure

c: David E. Janssen  
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer  
Board of Supervisors

**County Counsel Plan to Monitor and Control Lawsuit Costs  
Commensurate with Liability Risk and Monetary Exposure**

The County has, for many years, utilized outside private counsel, in addition to in-house County Counsel attorneys to handle County litigation. The final report of the independent outside audit of the Office of County Counsel by Barrington-Wellesley/Altman Weil, submitted in November of 1998, concluded that the County Counsel's processes for determining which cases to retain in-house and which to refer to outside counsel are sound and in keeping with those used in other well managed law departments.

To further the management of the litigation, we propose both structural as well as procedural changes. A single point of contact within the office to oversee the litigation on a daily basis will assist in migrating all litigation programs (in-house and outside counsel) to a uniform litigation/corrective action strategy as has been successful in the processing of hospital liability issues.

We will work with the Centralized Risk Manager, as recently approved in concept by the Board, to further refine our processes to assure the implementation of a "best practices" approach not only from within the County, but from concepts which the Centralized Risk Manager may wish to have us consider.

With regard to both in-house and outside counsel, the County Counsel has processes to evaluate individual cases assigned and to monitor their handling throughout the litigation. Although the various units of litigation and litigation oversight have undertaken steps to address the costs and strategies of litigation, such evaluation and monitoring procedures have not to date been sufficiently systematized in a comprehensive or consistent manner as to all types or categories of litigation. For example, considerable effort has been made, with beneficial results, to systematize the initial assessment and on-going review and monitoring of medical malpractice and hospital liability matters from the initial report of incident or claim through the process of litigation and ultimate disposition. This has included assisting in the development and assessment of corrective action plans, where appropriate, to address ongoing risk management concerns.

County Counsel intends to adapt and expand the processes which have proved beneficial with regard to medical malpractice and hospital liability cases to all other areas of County litigation. This would include not only other areas of liability litigation, such as Sheriff's cases or dangerous condition and road cases, but also those that do not directly involve County monetary liability, such as personnel and labor matters or lawsuits challenging County practices or policies.

Processes and/or actions which will be developed and implemented by the County Counsel in the future include the following:

- Uniformly requiring roundtables involving department staff, centralized risk management, third party administrator if applicable, and both litigation and supervising attorneys, for purposes of case evaluation, assessment of potential liability or other impact, and development of ultimate case plan and strategy within six months of receipt of lawsuit.
- Revising the review of case plan and strategy to require a roundtable when County defense costs in a case reach standard benchmarks established for the type of litigation commensurate with assessments of potential liability and monetary exposure established at the outset of the case and confirmed at the initial roundtable meeting.
- Instituting peer review procedures for evaluation of case plan and strategy, including the litigation attorney, supervising attorney, division chief and appropriate senior managing attorney, in all cases in which projected defense fees and costs are over \$ 100,000 or in which projected fees and costs exceed the estimate of potential liability.
- Notifying client departments when defense fees and costs exceed \$50,000 in an individual case.
- Developing and implementing termination plans and strategies when feasible in cases where the costs of litigation are not commensurate with assessments of liability risk and/or monetary exposure.
- Reviewing current forms of reports to the Board and client departments to determine if revision/consolidation/ elimination of such reports and/or the implementation of different reporting mechanisms would be more meaningful to the Board, the client departments, the Centralized Risk Manager, and the budget analysts.
- Analyzing particular areas of risk, such as the foster care and other programs of the Department of Children and Family Services, which require additional focus and/or resources similar to those associated with the hospital liability program to close the gap between programmatic issues and resulting tort liabilities.

These processes and actions will be developed and implemented in coordination with and subject to refinements which may be identified through consultation with the various department heads and the County Risk Manager appointed pursuant to the Consolidated Risk Management Program approved by the Board of Supervisors on April 30, 2002.